

STATE OF MICHIGAN
COURT OF APPEALS

ARTHUR LAUDERDALE,

Plaintiff-Appellant,

v

DETROIT MUNICIPAL CREDIT UNION,
MONUMENTAL GENERAL INSURANCE
CORP., CITY OF DETROIT, and BOARD OF
TRUSTEES OF THE GENERAL OR
POLICEMEN AND FIREMEN RETIREMENT
SYSTEM OF THE CITY OF DETROIT,

Defendants-Appellees.

UNPUBLISHED

January 5, 2001

No. 216838

Wayne Circuit Court

LC No. 97-720027-CP

Before: Griffin, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Plaintiff Arthur Lauderdale appeals as of right the circuit court's grant of summary disposition in favor of defendants. The court's order followed its conclusion that plaintiff's claims were barred by res judicata. We affirm.

Plaintiff was an employee of the City of Detroit's Department of Transportation and a member of defendant Detroit Municipal Credit Union ("DMCU"). Plaintiff applied for a \$5,000 loan from defendant DMCU and executed two documents, which defendant DMCU claims provided defendant DMCU with a security interest in plaintiff's annuity savings plan. This annuity savings plan was administered by defendant Board of Trustees of the General or Policemen and Firemen Retirement System ("GRS"). The annuity savings plan was established by Detroit's City Charter and is funded entirely by voluntary employee contributions. A provision in the Detroit City Charter restricts alienation of funds from the annuity savings plan and provides:

The right of a person to a pension, annuity, or retirement allowance, to the return of accumulated contributions, the pension, annuity, or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter and the moneys in the various funds of the retirement system shall be unassignable and shall not be subject to execution, garnishment,

attachment, the operation of bankruptcy or insolvency law, or any other process of law whatsoever, except as specifically provided in this chapter.

Plaintiff became disabled and discontinued payments on the loan with DMCU. Plaintiff also filed for Chapter 7 bankruptcy and was granted an order of discharge. Some years later, plaintiff elected to take a partial distribution in the amount of \$5,000 from his annuity savings plan. Defendant GRS, in accordance with the security agreements signed by plaintiff, notified defendant DMCU of this election. Defendant DMCU obtained the \$5,000 check from defendant GRS and applied the check to the remaining balance on plaintiff's unpaid loan. Plaintiff then successfully moved to reopen his Chapter 7 case and filed suit against defendant DMCU in United States Bankruptcy Court, arguing that defendant DMCU held an invalid security interest and violated the order of discharge by seizing plaintiff's money. The bankruptcy court disagreed and found that defendant DMCU had a valid security interest. Plaintiff appealed to United States District Court, and that court affirmed the decision of the bankruptcy court.

Plaintiff also filed suit against defendants DMCU, GRS, Monumental General Insurance Corporation, and the City of Detroit in Wayne Circuit Court. Plaintiff alleged causes of action for breach of contract, breach of fiduciary duty, violation of Detroit's City Charter, and violation of the Consumer Protection Act. Defendant DMCU moved for summary disposition arguing that plaintiff's claims in circuit court were barred by res judicata and collateral estoppel. The circuit court found plaintiff's claims barred by res judicata and granted defendant DMCU's motion for summary disposition.

Plaintiff claims that the circuit court's grant of summary disposition for defendants was improper because plaintiff's claims were not barred by res judicata. We disagree.¹

We review the decision on a motion for summary disposition de novo. Defendants were granted summary disposition pursuant to MCR 2.116(C)(7). A motion brought under MCR 2.116(C)(7) requires this Court to "consider all documentary evidence filed or submitted by the parties." *Sewell v Southfield Public Schools*, 456 Mich 670, 674; 576 NW2d 153 (1998). In addition, "the contents of the complaint must be accepted as true unless specifically contradicted by the affidavits or other appropriate documentation submitted by the movant." *Id.*

In the instant case, federal law determines the applicability of res judicata because the prior action occurred in federal court.² *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich

¹ In a secondary claim, plaintiff contends that defendants waived the right to assert res judicata or collateral estoppel as defenses because these defenses were not included in defendants' first responsive pleading. Though not compelled to address this claim given plaintiff's failure to raise the issue in the circuit court, see *Candelaria v BC General Contractors, Inc*, 236 Mich App 67, 83; 600 NW2d 348 (1999), we note that because defendants raised these defenses as soon as they became legally available, the defenses were not waived. *Meridian Mutual Ins Co v Mason-Dixon Lines, Inc*, ___ Mich App ___, ___ NW2d ___ (Docket No. 199797, issued 09/26/00), slip op 2.

² We note that the circuit court failed to recognize that federal res judicata law applied. Instead, the circuit court refused to make a determination and applied both federal and state law, (continued...)

372, 378 n 8, 380-381; 596 NW2d 153 (1999); see also *Silcox v United Trucking Serv, Inc*, 687 F2d 848, 852 (CA 6, 1982). “The doctrine of res judicata, or claim preclusion, provides that a final judgment on the merits of an action precludes the ‘parties or their privies from relitigating issues that were or could have been raised’ in a prior action.” *Kane v Magna Mixer Co*, 71 F3d 555, 560 (CA 6, 1995) (citation omitted). Res judicata requires a party to satisfy four elements: “(1) a final decision on the merits by a court of competent jurisdiction; (2) a subsequent action between the same parties or their privies; (3) an issue in the subsequent action which was litigated or which should have been litigated in the prior action; and (4) an identity of the causes of action.” *Id.*

We first find that the decision of the United States Bankruptcy Court was a final decision on the merits. The bankruptcy court had jurisdiction based on plaintiff’s earlier Chapter 7 action. The court also examined the issue of whether defendant DMCU had a valid security interest and appropriately acquired \$5,000 of plaintiff’s annuity savings plan funds. Determining that defendant DMCU did have a valid security interest, despite the anti-alienation provision, the court granted summary judgment to defendant DMCU. We additionally note that this decision was affirmed in United States District Court.

Next, we find that this subsequent action, filed by plaintiff in Wayne Circuit Court, involved defendant DMCU, also a defendant in plaintiff’s United States Bankruptcy Court case. Defendants City of Detroit and GRS, however, were not defendants in that United States Bankruptcy Court case. Thus, the cases did not contain the same parties. Nevertheless, the application of res judicata is not precluded because privity between the parties exists. “[T]he term ‘privity’ is now used to describe various relationships between litigants that would not have come within the traditional definition of that term.” *Richards v Jefferson County*, 517 US 793, 798; 116 S Ct 1761; 135 L Ed 2d 76 (1996). “[I]n certain limited circumstances, a person, although not a party, has his interests adequately represented by someone with the same interests who is a party.” *Id.* Here, the interests of defendants City of Detroit and GRS in the circuit court case were adequately represented by defendant DMCU in the United States Bankruptcy Court case.

Third, we conclude that plaintiff presents the identical issue previously litigated. The United States Bankruptcy Court identified plaintiff’s currently asserted position regarding the validity of defendant DMCU’s security interest when it stated:

Plaintiff claims that, due to the restriction on alienation clause set forth in the fund, Defendant’s security interest never attached or perfected. Therefore, Plaintiff contends that, by enforcing the alleged security interest post-discharge, Defendant intentionally violated the permanent injunction of [11 USC] 524(a)(2).

In reaching its decision, the bankruptcy court went on to remark:

(...continued)

reasoning that it was irrelevant which law was applied because the outcome would be the same regardless.

The Court cannot embrace Plaintiff's attempt to "have it both ways," where Plaintiff chose to ignore the restriction on alienation provision set forth in the annuity savings plan by pledging the interest as collateral for a loan, and then arguing [sic] that the pledge is unenforceable because of the same restriction. The restriction either is or is not enforceable for such a purpose and, in light of [*In re Dunn*, 215 BR 121 (ED Mich, 1997)], this Court finds that it is not enforceable.

It is thus clear that the United States Bankruptcy Court concluded that defendant DMCU had a valid security interest in plaintiff's annuity savings plan, and this is the precise issue raised by plaintiff in the instant case: To secure a ruling that defendant DMCU was not entitled to the \$5,000 from plaintiff's annuity savings plan, the circuit court would have to determine that defendant DMCU's security interest was invalid.

Finally, however, the causes of action in the cases were not identical. In the bankruptcy court case plaintiff argued that defendant DMCU "willfully and intentionally violated the injunction provided for under 11 USC § 524 (a)(2) when Defendant [DMCU] enforced its security interest post-discharge." Here, in contrast, plaintiff brought causes of action for breach of contract, breach of fiduciary duty, violation of Detroit's City Charter, and violation of the Consumer Protection Act in circuit court.

Despite this difference, we recognize that res judicata extinguishes all claims arising out of the same transaction or series of transactions. See *Wilkins v Jakeway*, 183 F3d 528, 535 (CA 6, 1999). Therefore, a plaintiff is pressured to present all material relevant to the claim in one action, including any and all theories of the case even where those theories are based on different substantive grounds. *Id.* Accordingly, we conclude that plaintiff should have brought the causes of action raised in circuit court in the original United States Bankruptcy Court proceeding.³

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy

³ As the circuit court recognized, the United States Bankruptcy Court could have exercised pendent jurisdiction over these causes of action. *In re Petrolia Corp*, 79 BR 686 (ED Mich, 1987); *In re Earl Roggenbuck Farms, Inc*, 51 BR 913 (ED Mich, 1985); see also *Bergeron v Busch*, 228 Mich App 618, 627; 579 NW2d 124 (1998).